



Release signed by employee during a termination meeting found to be unenforceable

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In the recent decision of [Rubin v. Home Depot Canada Inc.](#), the Ontario Superior Court of Justice held that a release signed by an employee at the time his employment was terminated was unenforceable, as the employee did not have sufficient time to review the release and seek advice.

Background

Eric Rubin worked as a competitive shopper for Home Depot Inc. (Home Depot) and its predecessor for almost 20 years. He was 63 years old. His employment was terminated by Home Depot during a brief meeting at which he was handed a letter offering him 28 weeks' pay in lieu of notice in exchange for signing a release. This offer included his minimum statutory notice and severance pay entitlements under the [Employment Standards Act, 2000](#), totaling 27.75 weeks, plus an additional one quarter weeks' pay. The offer did provide for benefits continuation during the 8-week statutory notice period; however, it was silent about certain benefits, notably accidental death and dismemberment coverage. While the letter contained language to the effect that Mr. Rubin would have a week to review and sign the release, he signed it during the meeting and accepted the 28 weeks' pay.

Shortly after his termination, Mr. Rubin retained counsel, who sent a letter to Home Depot challenging the enforceability of the release and asking to negotiate an appropriate severance package. Home Depot refused, relying on the release, and Mr. Rubin brought a motion for summary judgment, seeking to set aside the release. Home Depot moved for dismissal, arguing that the release was enforceable because Mr. Rubin had not been pressured into making an immediate decision, had taken the time to read the letter before signing and had asked about his options regarding apportioning funds to his RRSP.

Superior Court Decision

Justice Lederer of the Ontario Superior Court found that, given the circumstances in which it was signed, the release was unenforceable. Justice Lederer applied the test for unconscionability outlined in the Alberta Court of Appeal decision [Cain v. Clarica Life Insurance Company](#) and later adopted by the Ontario Court of Appeal in [Titus v. William F. Cooke Enterprises Inc.](#), to find that release was unenforceable. This decision was based on the following factors:

- The severance package offered was grossly unfair and “far removed from what the community would accept” given the fact that it was a without-cause termination and the fact that Mr. Rubin was approaching the end of his working life.
- Mr. Rubin lacked suitable advice regarding the offer. No attempt had been made by the employer’s representative to explain or clarify the terms of the severance package (which, according to the judge, were ambiguous and misleading) and Mr. Rubin was not told that he could take a week to think about, or obtain independent legal advice (though the letter provided a deadline for acceptance that was a week later).
- The inherent imbalance of bargaining power between Mr. Rubin and his employer. The judge found that it was not relevant that Mr. Rubin failed to act concerned or surprised at the meeting.
- Home Depot knowingly took advantage of Mr. Rubin’s vulnerability by misleading him to believe his only option was to sign the release, when in fact the release gave him barely more than he was already entitled to by statute.

Based on Mr. Rubin’s role and responsibilities, his years of service, his age, and the difficulty he was likely to experience finding alternative employment, the judge found that he was entitled to 12 months’ pay in lieu of notice.

Our Views

This case is a reminder to employers that a release signed on the spot by an employee at the time of termination may later be challenged by the employee and be found to be unenforceable, based on the inherent imbalance of bargaining power between an employee and his or her employer at the time of termination and the lack of opportunity to obtain legal advice. To ensure the reliability of a release, employers should first and foremost not permit employees to sign the release at the termination meeting. Employers should inform employees that they must take the offer away to consider it and obtain independent legal advice if they so choose. Employers cannot rely on the fact that employees *could* have taken more time to consider the offer; they must ensure that employees do so.

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